06A1191

IN THE

SUPREME COURT OF THE UNITED STATES

No. 06-1209

CAPITAL CASE

EXECUTION DATE

JOHN WASHINGTON HIGHTOWER

Petitioner,

versus,

WILLIAM TERRY, Warden
Georgia Diagnostic and
Classification Prison,

Respondent.

FILED
JUN 26 2007
JUN 20 2007
OFFICE OF THE CLERK
SUPREME COURT, U.S.

MOTION FOR STAY OF EXECUTION PENDING RESOLUTION OF PETITION FOR REHEARING FROM DENIAL OF A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

Comes now Petitioner, JOHN WASHINGTON HIGHTOWER, by and through his undersigned counsel, and, pursuant to 28 U.S.C. Section 2251, requests a stay of execution pending the disposition of his Petition for Rehearing from denial of a Petition for Writ of Certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit. In support of his application, respectfully states as follows:

Mr. Hightower timely filed his Petition for Rehearing with this Court on June 8, 2007, after this court denied his Petition for Writ of Certiorari on May 14, 2007.

While the Petition for Rehearing was pending, the Superior Court of Baldwin County entered an order scheduling Mr. Hightower's execution for between noon, June 26, 2007, and noon, July 3, 2007.

Mr. Hightower's Petition for Rehearing raises substantial issues relating to the lower federal and state courts' application of this Courts holdings in *Batson v. Kentucky*, 476 U.S. 79 (1986) and *Miller-El v. Dretke*, 545 U.S. 231 (2005).

Currently there is a split amongst the circuits and division within the states concerning the analysis of a claim under *Batson* and *Miller-El*.

This Court is currently scheduled to consider Mr. Hightower's Petition for Rehearing in the near future therefore a stay of execution will not unnecessarily delay any state proceedings.

These circumstances warrant a stay of execution so as to allow this Court time to consider the significant constitutional issues presented in Mr. Hightower's Petition for Rehearing. Petitioner is scheduled for execution today, June 26, 2007, at 7:00 p.m. In this motion for stay, Petitioner shows: 1) irreparable injury if no stay is granted; 2) a "reasonable probability that four (4) members of the Court will consider the issue [presented] sufficiently meritorious to grant certiorari," *Graves v.*

Burnes, 405 U.S. 1201 (1972) (Powell, Circuit Justice); and, 3) a likelihood of success on the merits. *See Barefoot v. Estelle*, 463 U.S. 880 (1983) *see also Fare v. Michael C.*, 439 U.S. 1310 (1978) (Rehnquist, Circuit Justice).

Petitioner respectfully requests that this Court stay his execution pending the resolution of petition for a writ of certiorari.

Dated, this the 20th day of June, 2007.

Respectfully submitted,

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COUNSEL FOR MR. HIGHTOWER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Pleading has being furnished by hand delivery to counsel for Respondent, Senior Assistant Attorney General Susan V. Boleyn,40 Capital Square, SW, 132 State Judicial Building, Atlanta, Georgia 30334-1300, this 20th day of June, 2007.

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